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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

RAYMOND DOBARD,

Appellant,

vs.

CITY OF OAKLAND,

Appellee,

APPENDIX TO MOTION

EDITOR'S NOTE

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APPENDIX TO MOTION

CITY OF OAKLAND HOUSING CODE

CHAPTER 2 - ENFORCEMENT

Sec. H-201. (a) Authority. The Housing Division Official is hereby authorized and directed to administer and enforce all of the provisions of this Code.

(b) Inspection and Right of Entry. Whenever the Housing Division Official shall have cause to suspect that conditions which do not conform to this Code exist in a particular residential building or premises, or whenever the Housing Division Official authorizes and directs the inspection of all residential buildings or premises subject to the provisions of this Code in a defined area of the City of Oakland, or whenever said Housing Division Official shall authorize and direct inspections of residential buildings or premises as a part of a routine spot check, duly authorized representatives of the Housing Department of the City of Oakland may enter and inspect any such residential building or premises to secure compliance with, or prevent a violation of, any provision of this Code.

No premises shall be inspected until a reasonable notice is given to the owner or occupant, or to the agent of either.

The owner or authorized agent of the owner of any residential building or premises may enter the building or premises whenever necessary to carry out any instructions or perform any work required to be done pursuant to this Code.

No person authorized by this section to enter and inspect any building or

premises shall enter any dwelling unit between the hours of 5:00 p.m. of any day and 8:30 a.m. of the succeeding day without the consent of the owner or of the occupants of the dwelling unit nor enter any dwelling unit in the absence of the occupants, except when the structure is in such condition as to place in jeopardy the life, limb, or morals of the public, in which case entry may be made at any time.

If the owner or occupant shall refuse or delay to open said residential building or premises to said duly authorized representative, and admit a free examination thereof, he shall be guilty of an infraction.

(c) Responsibilities Defined. Every owner remains liable for violations of duties imposed upon him by this code even though an obligation is also imposed on the occupants of his building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this Code.

Every owner, or his agent, in addition to being responsible for maintaining his building in a sound structural condition, shall be responsible for keeping that part of the building or premises which he occupies or controls in a clean, sanitary, and safe condition including the shared or public areas in a building containing two or more dwelling units.

Every owner shall, where required by this Code, the health ordinance or the Health Officer, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment, or facilities for the prevention of insect and rodent infestation, and where infestation has taken place, shall be responsible for the extermination of any insects, rodents, or

other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.

Every occupant of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary, and safe condition that part of the dwelling or dwelling unit or premises which he occupies and controls, shall dispose of all his rubbish, garbage, and other organic waste in manner required by the health ordinance and approved by the Health Officer.

Every occupant shall, where required by this Code, the health ordinance or the Health Officer, furnish and maintain approved devices, equipment or facilities necessary to keep his premises safe and sanitary.

CHAPTER 3

ENFORCEMENT-VIOLATIONS-RESPONSIBILITY

Sec. H-301. General. Whenever the Housing Division Official determines by inspection that an existing residential building or buildings or structure accessory thereto, has become substandard or unsafe, or that any building or structure is unsafe, he shall institute proceedings to cause the repair or rehabilitation of the building, or if such repairs or rehabilitation are impracticable, then he shall order the building immediately vacated and demolished in the manner hereinafter provided.

Sec. H-302. Notification. Order to Comply or Show Cause. Hearing. Right of Lienholders. Limitation or Right to Apply to Court. The Housing Division Official shall give official notice in writing to the owner of a substandard residential building, or an unsafe building, or to any person in control of the building, specify-

ing the inadequacies and hazards contained herein. He shall in said official notice fix the time and place of hearing before the Housing Advisory and Appeals Board where said owner, or person in control, may show cause, if any he has, why said building should not be declared a substandard residential building, or an unsafe building. Said notice shall further advise said property owner, or person in control, that if he does not so appear and show cause, said structure shall be declared a substandard residential building or unsafe building. Said official notice shall likewise be given to any mortgagee or beneficiary under any deed of trust or record. Said notice to said owner or person in control, and to any mortgagee or beneficiary under a deed of trust of record shall be given as hereinafter set forth.

The Housing Advisory and Appeals Board at the time and place fixed for such hearing shall hear said matter and shall:

1. Find, determine and declare that said building is, in fact, a substandard residential building, an unsafe building, or both; and thereupon determine what, if any, of the specified inadequacies or hazards which render the building a substandard residential building or unsafe building must be corrected or abated to render said building standard and safe; or

2. Find and determine that said building is neither a substandard residential building nor an unsafe building. Said hearing shall be conducted pursuant to the rules and regulations of the Board.

The Housing Advisory and Appeals Board shall render its decision in writing and shall give official notice thereof to all interested persons appearing at said hearing. A copy of a decision declaring a building substandard or unsafe shall be

posted upon said building.

If the Housing Advisory and Appeals Board finds and determines that said building is a substandard residential building or unsafe building, it shall include in its aforementioned notice of decision an order to correct or abate all of the conditions rendering the building substandard or unsafe by the closing or repair of said building within thirty (30) days after the date of the mailing and posting of such notice of its said decision. If such building is encumbered by a mortgage or deed of trust or record and the owner, or person in control of the building, has not complied with the order of said Housing Advisory and Appeals Board within a period of thirty (30) days after the mailing and posting of said notice of decision, the mortgagee or beneficiary under such deed of trust may, within a period of fifteen (15) days after the expiration of said thirty-day period, comply with the requirements of the decision of said Board, in which event the cost to such mortgagee or beneficiary shall be added to and become a part of the lien secured by said mortgage or deed of trust and shall be payable at the same time and in the same manner as may be prescribed in said mortgage or deed of trust for the payment of any taxes advanced or paid by said mortgage or beneficiary for and on behalf of said owner.

Any owner or other interested person having any objection or feeling aggrieved at any proceedings taken by the Housing Division Official, or the Housing Advisory and Appeals Board, must bring an action in a court of competent jurisdiction within ten (10) days after the posting of the decision of said Board, upon said building, otherwise all objections will be deemed to have been waived.

If the decision of said Board shall not have been complied with on or before the expiration of forty-five (45) days after the mailing and posting of the notice of said decision the Housing Division Official shall order the building immediately vacated and may institute appropriate action or proceedings to correct or abate the conditions. Disobedience of said order of said Housing Division Official to vacate said premises shall constitute a separate infraction for each and every day said violation shall continue. In addition to the punishment provided by law, the person found guilty of violating said order to vacate shall be liable for all costs, expense, and disbursements paid or incurred by the Housing Division Official in the prosecution of the violation as shall be fixed by the court in which the violation is prosecuted.

Sec. H-304.(a) Any commercial or residential parcel, lot, building or structure which is not kept clean, sanitary and free from all accumulation of weeds, rank growth, rubbish, garbage or debris so as to constitute a potential fire or health hazard shall constitute a public nuisance and shall be ordered cleaned by the issuance of a Notice to Abate in accordance with Section H-303 of this Code.

Any such parcel, lot, building, or structure which remains uncleaned of said offensive materials heretofore described after a period of ten (10) days from the issuance of said Notice to Abate shall then be ordered cleared and abated by any appropriate means upon written notice of the Housing Division Official. Any charges therefore shall become a charge against the City in accordance with Sections H-307 and H-308 of this Code.

(b) Any commercially or residentially zoned

parcel, lot or premise on which recyclable materials as defined by this Code are openly stored, causing blight or hazardous conditions, so as to constitute a potential fire or health hazard shall constitute a public nuisance and shall be ordered cleaned by the issuance of a Notice to Abate in accordance with Section H-303 of this Code.

If, after proper notice to remove the offensive material is given and the ten (10) day period in which to comply or appeal has passed, the Housing Division Official may order the premises cleaned in accordance with procedures set forth in Sections H-307 and H-308 of this Code.

Sec. H-305. Demolition Procedure. Whenever the Housing Division Official shall order an unsafe building or a substandard residential building demolished, he shall commence proceedings before the Housing Advisory and Appeals Board to abate said building as a public nuisance, and said Board shall properly notice and set the matter for hearing and decision, in accordance with the Rules of Procedure of the Board. If the Board shall find and decide said building is a public nuisance and shall order its demolition, and if said nuisance has not been abated by the owner thereof, or other interested party, within the time provided therefor, then the Board shall authorize and direct the Housing Division Official to raze and demolish said building by such means as he deems appropriate, and shall cause the work to be performed in connection therewith in accordance with public works practices. The Board shall have the power and duty to implement the demolition procedure set forth generally herein by the promulgation of specific rules and regulations.

Sec. H-306. Standard for Demolition. The following standards shall be followed

by the Board in determining whether an unsafe building or a substandard residential building shall be demolished:

1. If an unsafe building or substandard residential building is in such condition as to make it dangerous to the health, morals, safety or general welfare of the neighborhood wherein it is located, it shall be demolished; or

2. If the unsafe building or substandard residential building is a public nuisance as defined in the Civil Code of the State of California it shall be demolished; or

3. If the unsafe building or substandard residential building is a fire hazard it shall be demolished; or

4. If the unsafe building or substandard residential building cannot reasonably be repaired or rehabilitated so that it shall no longer exist in violation of the law, it shall be demolished.

Sec. H-307. Cost a Charge Against the City. Statement of Costs. Collection of Costs. The cost incurred in obtaining Real Property Ownership Reports and in razing or demolishing said building or securing or cleaning said parcel by action of the Housing Division Official shall be a proper charge against the City Treasurer and shall be paid therefrom. Reinspection fees to ascertain Code compliance for overdue abatement of previously noticed or cited violations shall be charged against the owner. Fees shall be in the amount as currently described in the Master Fee Schedule. The Housing Division Official shall give the owner or other interested party of such premises a written notice showing the itemized cost of such abatement, and requesting payment thereof.